

APR 29 2003

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CATHY A. CATTERSON
U.S. COURT OF APPEALS

MOHAMMED SPAK ABDALLA,

Petitioner - Appellant,

v.

K.C. KRAMER, Warden,

Respondent - Appellee.

No. 01-16203

D.C. No. CV-97-05055-OWW

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Oliver W. Wanger, District Judge, Presiding

Argued and Submitted April 9, 2003
San Francisco, California

Before: NOONAN, McKEOWN, and RAWLINSON, Circuit Judges.

In his habeas petition, Mohammed Spak Abdalla (“Abdalla”) contends that the state court committed constitutional error by rejecting his proposed voluntary intoxication jury instruction. However, Abdalla failed to demonstrate that the

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state court's decision was contrary to clearly established United States Supreme Court precedent. *See Lockyer v. Andrade*, 123 S.Ct. 1166, 1172 (2003). Since Abdalla failed to demonstrate that his alcohol consumption affected his mental capacity or intent, a voluntary intoxication instruction was not warranted or constitutionally required. *See Clabourne v. Lewis*, 64 F.3d 1373, 1380 (9th Cir. 1995).

AFFIRMED.